Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. .....

IN THE
SUPREME COURT OF THE UNITED STATES

Mr. Norman Hartig, -PETITIONER

v.

Mr. Michael McKeen, et al, RESPONDENT(S)

On Petition for Writ of Certiorari to the
Third Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Mr. Norman Hartig Pro Se
502 Washington Ave
Ewing, New Jersey 08628-2830
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55 pgs

QUESTIONS PRESENTED

1.) Whether prejudice to a criminal defendant be presumed, when a prosecutor intentionally and willfully discloses grand jury materials to enhance the credibility of a state's witness expected to testify in a criminal trial?

2) Whether a Federal District Court, reviewing a petition for a Writ of Habeas Corpus, filed by a state prisoner, can deny a request for assignment of counsel and then deny the petitioner's lack of legal knowledge?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The petitioner is Mr. Norman Hartig who was a prisoner at the Southern State Correctional Facility in Delmont, New Jersey.

Mr. Michael McKeen, then warden of the Southern State Correctional Facility, is one of the respondents.

Mr. James Farmer Jr., is the Attorney General for the State of New Jersey is the other respondent.

PLEASE NOTE, THAT THE NEW JERSEY ATTORNEY GENERAL DID ASSIGN THE MERCER COUNTY PROSECUTOR TO RESPOND TO THE PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS AND HAS BEEN THE RESPONDENT'S ATTORNEY AT ALL TIMES RELEVANT TO THIS ACTION.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at APPENDIX D to the petition and is unpublished.

The opinion of the United States district court appears at APPENDIX C to the petition and is unpublished.

The opinion of the New Jersey State Supreme Court appears at APPENDIX B to the petition and is unpublished.

The opinion of the Superior Court, Appellate Division appears at APPENDIX A to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was January 15, 2002

No timely petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The date on which the highest state court decided my case was February 24, 1998. A copy of that decision appears at APPENDIX B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution which provides:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

On the evening of October 21, 1992, Mr. Norman Hartig (hereinafter the petitioner) was startled by someone banging on his kitchen window. When he opened the back door to his home to see who was there, he spotted his next door neighbor, Mr. Berson, (hereinafter the victim) standing approximately 5 to 8 feet away. The knocking on the window had occurred earlier that evening but no one was observed in the area. When petitioner asked what he was doing on his property, the victim charged, with clenched fists and began punching petitioner about his body. The altercation alerted nearby neighbors who summoned the police. Both were taken to a nearby hospital and treated for injuries. Petitioner was then taken to the police station and charged with second degree aggravated assault. A bail hearing was held the next morning and petitioner was released on bail and special conditions that he leave his home and reside with his father in West Trenton. An attempt by the petitioner to lodge criminal charges against the victim was delayed by the Mercer County detectives until the prosecutor's office ordered them to allow the charges to be filed. The victim in this matter, a civil servant employed by the State, portrayed the petitioner as the aggressor, when in fact, it was the victim that had provoked the incident. The charges against the victim were finally filed but the District Attorney's office downgraded the charges and sent the matter to the Trenton Municipal Court for disposition.

Charged with aggravated assault in the October 21st incident, petitioner appeared before the grand jury delivering medical and surgery reports, documents, and photos verifying that his pre-existing injuries prevented him from engaging in the assault as described by the victim. Rather, the force exerted by the petitioner was in self-defense.

On or about April 20, 1993, the Mercer County Grand Jury indicted petitioner on one count of second degree aggravated assault.

Before the start of petitioner's criminal trial, a hearing was held in the Trenton Municipal Court for the downgraded charges filed against the victim. During the course of the hearing, petitioner's counsel noticed that the attorney for the victim had in his possession the very same photos and reports that were entered into evidence at the grand jury hearing. A request was made to opposing counsel to produce the Court Order authorizing the release of the grand jury materials to him or his client. Counsel could not produce any authorization and further advised that he was unaware of any such Order. Counsel for the petitioner then made a request to the Court asking for a postponement to evaluate the extent of the damage caused as a result of the taint. That request was denied and the case against the victim was dismissed.

On December 23, 1993, petitioner's counsel filed a motion, prior to trial, to dismiss the indictment based upon prosecutorial misconduct. Counsel requested the Court to exercise its supervisory power because the State had turned over secret grand jury materials to the victim. The released materials violated petitioner's due process rights to a fair trial while the State was enhancing the credibility of its star witness.

The Honorable Thomas DeMartin, J.S.C., conducted an evidentiary hearing on 02/14/94, 03/14/94, 03/28/94, 05/2/94 and 06/20/94. Petitioner testified at the hearing along with (2) attorneys who represented the victim, (2) assistant prosecutors, (2) clerks from the grand jury room and (1) detective from the Trenton Police Department. Each witness denied any knowledge or involvement in the release of the grand jury materials. One of the testifying prosecutors could not "recall" to approximately 104 questions put to her by petitioner's counsel. Transcripts of the hearing will show that the witnesses attempted to cover up their misdeeds they knew to be unlawful. Counsel for the petitioner vigorously pursued the truth from each of these individuals and the hearing ended with the prosecuting attorney admitting that grand jury materials had been released unlawfully. However, the State claimed that it was done inadvertently.

The Court ruled, that although the grand jury materials were unlawfully released, there was no bad faith on the part of the State. Immediately, counsel filed an interlocutory appeal to the New Jersey Appellate Division based on the prosecutorial misconduct ground. The Court rejected the appeal and trial on the aggravated assault charge began on September 20, 1995. Petitioner testified on his behalf at trial in support of his self-defense theory. The jury found the petitioner guilty of the second-degree assault charge. The trial court sentenced him to an 8 year prison term with applicable fines. Counsel filed a motion to the Trial Court based on the same prosecutorial misconduct ground asserted before trial, claiming that said conduct had deprived petitioner of his right to a fair trial. The motion was denied and an appeal of his conviction and sentence was filed in the Superior Court Appellate Division raising, inter alia the prosecutorial misconduct ground. (APPENDIX A). The Appellate Division affirmed the conviction (APPENDIX A) and a petition for Certification filed to the New Jersey State Supreme Court, raising the same grounds advanced in the Court below, was denied. (APPENDIX B). On September 9, 1999, petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 raising, inter alia, that the prosecutorial misconduct resulted in denial of petitioner's due process rights as defined by the United States Supreme Court. Attached to the petition was a Motion for Assignment of Counsel and request for an Evidentiary hearing.

The Honorable Freda L. Wolfson, U.S. Magistrate Judge, District of New Jersey, denied petitioner's request for assignment of counsel. (APPENDIX E). On September 6, 2000, the Honorable Garrett E. Brown, District Court Judge, denied petitioner's application for writ of habeas corpus. (APPENDIX C). Petitioner then filed a request for a Certificate of Appealability in the United States Court of Appeals for the 3rd Circuit which was denied on Jan. 15, 2002. (APPENDIX D). No rehearing petition was filed. The instant petition for Certiorari follows.

* * *

Federal habeas corpus relief is precluded as to any claim that was adjudicated on the merits in a state court proceeding unless such adjudication:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or:

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding. 28 U.S.C. §§ 2254 (d) (1) & (2).

The foregoing sets forth the standard of review in habeas corpus proceedings.

Further, in reviewing a state trial court's judgment in a habeas corpus proceeding, trial errors affecting constitutional rights re subject to a harmless error analysis. (see Brecht v. Abrahamson, 507 U.S. 619,638, 113 S. Ct. 1710, 123 L.Ed.2d 353(1993). The Supreme Court has held that federal habeas relief may be granted when the "prosecutorial misconduct may 'so infect the trial with unfairness as to make the resulting conviction a denial of due prcess.'" Greer v. Miller, 483 U.S. 756, 765, 107 S.Ct. 3102, 97 L. Ed 2d 618 (1987) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 643. 94 S.Ct. 1868, 40 L. Ed. 2d 431 (1974). The Court further explained, that for due process to have been offended, "the prosecutorial misconduct must be 'of sufficient significance to result in the denial of the defendant's right to a fair trial.'" Id.

In the instant matter, petitioner relied on this Court's ruling in, Bank of Nova Scotia v. United States, 487 U.S. 250, 108 S.Ct. 2369, 101 L. Ed. 2d 228 (1988) to have his indictment dismissed. Both the Court's analysis and the text of its opinion confirm that the holding applies equally to prosecutorial misconduct that occurs at the pretrial and trial stages of a prosecution. Additionally, the Court held, that no court has the authority to dismiss the indictment on the basis of prosecutorial misconduct absent a finding that petitioners were prejudiced by such misconduct. Id. at 263, 108 S. Ct. 2369.

Petitioner respectfully submits, that failure of a reviewing court to make factual findings of prejudice is directly contrary to clear and well established Supreme Court precedent. A review of the District Court's Order entered in this matter (APPENDIX C) will reveal, that in the face of these precedents, the Court declined to make any findings that petitioner was in fact prejudiced by the prosecutors conduct. Instead, the Court relied entirely on the facts and arguments submitted to the State Court's. (see APPENDIX C, pg. 13a). As stated earlier, petitioner did submit a Motion for assignment of counsel and request for an evidentiary hearing to develop his argument supporting his constitutional violation. However, the Court erred when it dismissed petitioner's habeas application by relying and, using as a basis for that denial, petitioner's lack of legal expertise. (See APPENDIX C, ¶ 1 at pg. 13a) Moreover, the District Court was clearly in error when it misstated the facts of petitioner's case. For instance, the District Court erroneously stated, "Petitioner has failed to assert in any of the above grounds that the New Jersey state court's decisions in this case were either contrary to or an unreasonable application of clearly established federal law."...(see APPENDIX C, pg. 11a). That conclusion is not supported in this case. Petitioner did file a Traverse that clearly set forth the standard in habeas corpus cases. (see APPENDIX F at pg. 30a.)

The District Court further erred, when it stated in its opinion that, "[petitioner] had bitten off the victim's nose." (SEE APPENDIX C, pg. 9a Ft. Nt.) . The victim's nose was not bitten off. Although some injury was caused to his nose, he left the hospital with his nose fully intact. Another point that the District Court distorted is the opinion at APPENDIX C, pg.15a where the Court incorrectly concludes, "Furthermore, a close examination of Petitioner's claim...appears to rise from dismissed charges against the victim...rather than from errors in Petitioner's own proceedings." There were no documents presented by the petitioner that could lend itself to such an interpretation. Petitioner raised the dismissed charges against the victim because they form the basis of the misconduct claim, in that, the prosecutor's office unlawfully turned over grand jury materials to insure acquittal of the charges lodged against the victim by the petitioner. The dismissed charge, in and of itself, has never been the subject of this action. The central focus has been on the actions of the Mercer County Prosecutors that enabled the victim to have the charges dismissed. And the reason the prosecutors went to such great length is that the victim would be the State's star witness against the petitioner at the upcoming criminal trial. The credibility of the victim was crucial to the State's case and was the motivating force behind the unlawful disclosure. The dismissed charge was material to support the misconduct claim.

Any other interpretation is simply wrong. The foregoing clearly reveals that the District Court conducted a cursory review of petitioner's case and none of the aforementioned conclusions reached by the District Court are supported in the record.

More troublesome, is the District Court's reliance on the facts established at the evidentiary hearing conducted by Judge DeMartin in the State Court and the decision by the Appellate Division affirming the petitioner's conviction. (SEE APPENDIX C at pg. 15a & APPENDIX A, RESPECTIVELY). Petitioner respectfully submits, that the District Court erred when it relied on the state court rulings when the facts were clearly in dispute. Petitioner requested and was denied an opportunity to develop his constitutional issues in the Federal Court. (APPENDIX E). The ruling issued by Judge DeMartin at the conclusion of the evidentiary hearing represent on of the greatest oddities in petitioner's case. How a State Court Judge could possibly arrive at the conclusion stated in the opinion is beyond credibility. First, when the prosecutors took the stand, they immediately denied releasing any grand jury materials. Second, they were struck by amnesia during the examination conducted by petitioner's counsel until they were confronted with proof of their lies. Third, they then admitted their guilt and then claimed that there was no bad faith intended. (Based on the above abbreviated version), Judge DeMartin concluded and agreed that no bad faith on the part of the prosecutors had been demonstrated.

A review of that opinion will clearly show, that as a matter of law, the conclusion does not follow from the premise. No where in that opinion does Judge DeMartin attempt to make any factual findings as to why the prosecutors acted unlawfully. Just to merely state that there was no bad faith without explaining the Court's reasoning as to why such conduct occurred, does not make it so. The state courts have a lawful obligation to exercise their discretion in a manner prescribed by law. Failure to do so is an abuse and a violation of the petitioner's rights. Based on the facts of this case, how can a Court conclude that the actions of the Mercer County Prosecutor's office not constitute prejudice? Why else would they engage in unlawful conduct, if not for the sole purpose of causing prejudice to the petitioner? As the case now stands, that question has not been answered.

Therefore, based on the foregoing, the District Court and Third Circuit decision denying petitioner's writ for Habeas Corpus relief cannot be sustained and Certiorari should be granted.

REASONS FOR GRANTING THE PETITION

Petitioner filed for Habeas Corpus relief when he was incarcerated. Since the filing of that petition, he has been released and continues to pursue a vindication of his rights because of the collateral consequences to his reputation and career. Petitioner respectfully reminds the Court that this is not a case where the misconduct of the prosecutors remains in question. Instead, this is a case where the misconduct was admitted but the remedy has been in dispute. That is, in the state courts petitioner was seeking a dismissal of the indictment. In the Federal system the proper remedy would have been a reversal of his conviction. What would have been the correct remedy has never been resolved. Under New Jersey Law, (SEE 2C:30-2) the prosecutor's actions in this case constitute a third degree offense and would entitle petitioner to Federal relief. Additionally, Courts below misapplied the proper standard of review as set forth in Brecht v. Abrahamson, 113 S.Ct. 1710, by failing to conduct the "harmless error analysis". The District Court's opinion is devoid of even the term "harmless" so it cannot be concluded that the proper inquiry was conducted. Therefore, the petition for Certiorari should be granted because of the importance to United States citizens in having prosecutors who will insure that the guilty will not escape and that the innocent will not suffer.

None of the reviewing courts below made any factual findings of prejudice suffered by the petitioner at his criminal trial. The Courts stopped short of that inquiry by deciding that, since no misconduct occurred during the grand jury proceedings and that the error took place after the indictment was handed down, there was no prejudice to petitioner. The Nova Scotia, ruling says otherwise. Petitioner was denied the proper inquiry to determine the prejudice to his criminal trial defense by the District Court which is contrary to the Supreme Court's precedent and the Court, respectfully, should grant the request for Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Norman Hartig

Mr. Norman Hartig, pro se.

Date: MAY 29,. 2002

APPENDIX

[Appendix A]

SUPERIOR COURT, STATE
OF NEW JERSEY Nov. 26, 1997
No. A-3124-95T4

STATE OF NEW JERSEY,
Plaintiff-Respondent,
v.
NORMAN HARTIG,
Defendant- Appellant.

Submitted: October 29, 1997 -Decided:
Before Judges Kestin and Steinberg.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County.

Ivelisse Torres, Public Defender of New Jersey, attorney for appellant (Avery S. Chapman, Designated Counsel, of counsel and on the brief).

Maryann K. Bielamowicz, Mercer County Prosecutor, attorney for respondent (Charles Ouslander, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

A Mercer County Grand Jury indicted defendant for aggravated assault. Prior to trial, defendant filed a motion to dismiss the indictment based upon a contention that the Grand Jury presentation had been improperly disclosed to the victim. The motion judge conducted an evidentiary hearing and denied the motion.

A jury found defendant guilty of aggravated assault. Defendant was sentenced to a term of eight years with no parole ineligibility. The appropriate monetary penalties were imposed.

Defendant appeals, contending:

POINT I THE COURT ERRED IN FAILING TO DISMISS THE INDICTMENT DESPITE THE PRESENCE OF PROSECUTORIAL MISCONDUCT DEMONSTRATED BY THE UNAUTORIZED DISCLOSURE OF GRAND JURY MATERIALS.

POINT II THE TRIAL COURT ERRED BY FAILING TO CHARGE THE JURY AS TO SIMPLE ASSAULT.

POINT III THE SENTENCE OF THE COURT WAS BOTH IMPROPER AND EXCESSIVE BECAUSE THE DOURT DETERMINED, WITHOUT A HEARING, THAT DEFENDANT HAD PERJURED HIMSELF, AND THEN IMPOSEDA SENTENCE THATDEPARTED UPWARD FROM THE PRESUMPTIVE TERM.

After a review of the record, the applicable law, and the briefs filed, we conclude the contentions are without merit and affirm. See R. 2:11-3 (e) (2). We add the following comments:

Judge DeMartin conducted an evidentiary hearing on defendant's motion to dismiss the indictment. At the hearing, the State conceded that it turned over photographs and transcript records to the victim in violation of the secrecy requirement of Grand Jury proceedings. See R. 3:6-7. Judge DeMartin found that although the prosecutor's office acted negligently, it did not act in bad faith, and denied the motion to dismiss. The finding was supported by substantial evidence in the record. State v. Johnson, 42 N.J. 146 (1964).

> Before a dismissal of an indictment is warranted, there must be a finding of intention inconsistent with fair play and therefor inconsistent with due process, or an egregious carelessness or prosecutorial excess tantamount to suppression. In the absence of these conditions, the right of the public to its day in court in the prosecution of properly found indictments should be forfeited only if otherwise there would be manifest and harmful prejudice to defendant.
> [State v. Laganella, 144 N.J. Super. 268, 282-83 (App. Div.), app. dism., 74 N.J. 256 (1976).]

"The public interest in the prosecution of properly found indictments is ill served by the imposition of the 'extreme sanction of dismissal' .." State v. Sapienza, 202 N.J. Super 282, 287 (App. Div. 1985).

We are further in substantial agreement with Judge DeMartin's finding that there was no showing of prejudice by defendant which could justify the extreme sanction of dismissal in this case.

Affirmed.

[seal omitted]

./s/.....
Clerk

[Appendix B]

SUPREME COURT OF NEW JERSEY
C-763 September Term 1997
45,252

STATE OF NEW JERSEY,
Plaintiff-Respondent,
v.

NORMAN HARTIG
Defendant-Petitioner.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3124-95 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 24th day February, 1998.

.../s/.....
Stephen Townsend
CLERK OF THE SUPREME COURT

[Appendix C]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 99-4279 (GEB)

NORMAN HARTIG,
Petitioner,
v.
MICHAEL MCKEEN, et al.,
Respondents.

This matter having come before the Court upon the application of the Petitioner, Norman Hartig, for a writ of habeas corpus pursuant to 28 U.S.C. § 2254; and the Courthaving considered the parties submissions and the record in this matter without oral arguments pursuant to Fed. R. Civ. P 78; and for the reasons set forth in the Memorandum Opinion filed in the above-captioned action on this same date;

IT IS this 1st day of September 2000;

ORDERED that Norman Hartig's Petition for a writ of habeas corpus pursuant to 28 U.S.C. § is DENIED; and

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253, this Court certifies that there is no probable cause for an appeal of this Order; and

IT IS FURTHER ORDERED that this case is closed.

/s/
GARRETT E. BROWN, JR., U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 99-4279 (GEB)
MEMORANDUM OPINION

NORMAN HARTIG, Petitioner,
v.
MICHAEL MCKEEN, et al., Respondents

BROWN, District Judge

Norman Hartig ("Petitioner") is a state prisoner who was confined at Southern State Prison in Delmont, New Jersey and is presently confined at Turning Point, Inc., in Verona, New Jersey, filed an application (the "Petition") for a writ of habeas corpus pursuant to 28 U.S.C.§ 2254(a), raising several grounds for relief. The Respondents filed an Answer opposing the petition. For the reasons expressed in this Memorandum Opinion, issued without oral argument pursuant to Federal Rule of Civil Procedure 78, the Petition for a writ of habeas corpus is denied and the Petition is dismissed.

1. BACKGROUND

On or about April 20, 1993, a grand jury in Mercer County, New Jersey indicted Norman Hartig on a single count of Second Degree Aggravated Assault, in violation of N.J. Stat. Ann. § 2C:12-1b (1).

See Mercer County Indictment No. 93-04-0445, filed April 20, 1993, *and* App. to Def.'s Br. to N.J. Super. Ct. App. Div.{Def. App.] at Da1. The aggravated assault charge was based on an altercation between Petitioner and Frank Berson, leaving Berson severely injured.[1] Petitioner, represented by private counsel, entered a plea of not guilty at his arraignment on May 13, 1993. *See* Def.'s Br. to N.J. Super. App. Div. at 2. Petitioner's counsel then filed a motion to dismiss the indictment on December 23, 1993. On June 20, 1994, Petitioner's motion was denied and a jury trial commenced on September 20, 1995. On October 3, 1995, the jury trial concluded with a guilty verdict on the sole count of the indictment and a petty offense of disorderly conduct. The trial court sentenced Petitioner to a term of eight years imprisonment with no parole disqualifiers. Petitioner was also required to pay restitution to the victim for medical expenses and ordered to pay a $50 Violent Crimes Compensation Board penalty, as well as a $75 "Safe Streets" penalty.

Petitioner appealed the conviction and sentence to the New Jersey Superior Court, Appellate Division, presenting essentially the three identical grounds for relief he presents here. *See* Def.'s Br. toN.J. Super. Ct. App. Div. *and* Pet. ¶ 12A., B. and C.

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[1] *See* Def.'s Notice of Motion to Dismiss Indictment at 1; *see also* State's Resp. to Deny Mot. to Dismiss Indictment at 1) (stating "the bases of the aggravated assault charge was the fact the [Petitioner} had bitten off the victim's nose.")

The New Jersey Appellate Division affirmed the conviction on November 26, 1997. Thereafter, on February 24, 1998, the New Jersey Supreme Court denied Hartig's petition for Certification. *See* N.J. Sup. Ct. Order Den. Pet. for Certification, filed Feb. 25,1998.

On September 9, 1999, the instant *pro se* Petition for a writ of habeas corpus under 28 U.S.C. § 2254 was accepted for filing by the Court.[2] Although the instant Petition now sets forth Petitioner's claims as Due Process violations, thereby conferring federal jurisdiction, the merits of his claims are nevertheless the same as those raised in the state courts. Paragraph 12 of the etition contains three grounds and supporting facts which are set forth verbatim:

GROUND ONE: PROSECUTORIAL MIS-CONDUCT [sic] DEPRIVED PETITIONER OF DUE PROCESS OF LAW

Prosecutorial mis-conduct [sic] deprived petitioner of his rights to due process of law when the Mercer County prosecutors office

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[2] Petitioner filed his first petition for a writ of habeas corpus with the Court on January 4, 1999. That petition was dismissed without prejudice because the Court found that Petitioner failed to first exhaust all his claims in the state courts. Specifically, the Petitioner's second ground for relief--denial of a fair trial--was found not to have been exhausted in the state courts.

unlawfully turned over photographs, transcripts, and records used in the Grand Jury proceedings in violation of secrecy requirements.

GROUND TWO: VIOLATION OF DUE PROCESS
Trial court erred by failing to charge the jury as simple assault.

GROUND THREE: VIOLATION OF DUE PROCESS
The sentence of the Court was both improper and excessive because the court determined without a hearing, that defendant had perjured himself and then imposed a sentence that departed upward from the presumptive term.

Pet. at ¶ 12.A.B. and C.

In its Answer, the state opposes the Petition on its merits, and also raises the affirmative defense of failure to state a claim upon which the federal court can grant relief pursuant to 28 U.S.C § 2254(d). Because the Petitioner has failed to assert, in any of the above grounds, that the New Jersey state court's decisions in this case were either contrary to, or an unreasonable application of clearly establishedfederal law as determined by the Supreme Court of the United States, this Court will deny the Petition for failure to state a claim can grant relief. *See Id.*

Grounds one, three, and four of Petitioner's dismissed petition are now set forth in the instant petition as

Ground one, Ground two, and Ground three, respectively. *See* Pet. at ¶ 12.A., B. and C.

II. DISCUSSION

A. Habeas Standard

A federal court may only grant a petitioner's writ for habeas corpur relief if "the adjudication of the claim [in a state court]--(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States. "28 U.S.C. § 2254(d)(1). First, the "contrary to" clause can be fulfilled either (1)by the state court deciding a question of law in opposition to the Supreme Court's precedent or (2) by the state court "confront[ing] facts that are materially indistinguishable from a relevant Supreme Court precedent and arriv[ing] at [an opposite result]." *Williams v Taylor,* 120 S. Ct. 1495, 1519 (2000). Second, the "unreasonable application" clause can be fulfilled (1) if the state court either uses the Supreme Court's proper legal standard, yet "unreasonably applies it to the facts of the particular state prisoner's case" or (2) unreasonably "extends a legal principle from [the Supreme Court's precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Id.* at 1520. Thus, this court'sreview of Petitioner's amended application is limited in scope. Indeed, this Court "do[es] not sit to retry state cases *de novo* but, rather, to review for

violation of federal constitutional standards." *Milton v. Wainwright,* 407 U.S. 371, 377 (1972).

B. PETITIONER'S APPLICATION

1. *Ground 1*

Petitioner assert in Ground 1 that "[p]rosecutorial mis-conduct [sic] deprived [him] of due process of law." Pet. at ¶ 12.A. More specifically, Petitioner claims that "the Mercer County [P}rosecutors [O]ffice unlawfully turned over photographs, transcripts, and records used in GrandJury proceedings in violation of secrecy requirements." *Id.* at attachment. Respondents do not deny that the alleged conduct occurred. Respondents do, however, argue that Petitioner was not denied his right to a fair trial notwithstanding the disclosure of grand jury materials.[3] *See* Answer to Pet. at 6.

Since the instant Petition is devoid of supporting case law and relies solely on a recitationof facts in condensed form, the Court will examine Petitioner's argument as set forth in briefs submitted to the state courts by Petitioner's former counsel.

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[3] In fact, as the Superior Court of New Jersey, Appellate Division, found: "At the hearing, the State conceded that it turned over photographs and transcript records to the victim in violation of the secrecy requirement of Grand Jury proceedings." *State v. Hartig*, No. A-3124-95T4, at 2 (N.J. Super. Ct. App. Div. filed Nov. 26, 1997).

Petitioner's counsel asserted in his brief to the New Jersey
Appellate Division that when there is a prosecutorial violation of Grand Jury proceedings a "bright line" rule must be adopted, thus resulting in a dismissal of the indictment. *See* Def. Br to N.J. Super. Ct. App. Div. at 10-12. In its reply brief the State properly corrected Petitioner's misunderstanding of the Supreme Court's holding in *Bank of Nova Scotia v. United States,* 487 U.S. 250 (1988). *See* State Br. to N.J. Super. Ct. App. Div. at 18. In that case, the Supreme Court held, in matters of prosecutorial misconduct in Grand Jury proceedings, that,"absent a finding that petitioners were prejudiced by such misconduct "a court" has no authority to dismiss the indictment." *Bank of Nova Scotia,* 487 U.S. at 263.

The Supreme Court's decision in *Bank of Nova Scotia* is applicable here because as in that case, the alleged misconduct here occurred after indictment and, therefore, did not infect the integrity of the grand jury proceedings. The Supreme Court stated that in that case that "findings of Sixth Amendment postindictment violations were unrelated to the grand jury's independence and decision making process because the alleged violation occurred after the indictment."[4] *Id.* at 258. Likewise trial court

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[4] The Court does not condone prosecutorial misconduct. However, in accord with the Supreme Court authority, a dismissal of charges would not cure any prejudice suffered by the Petitioner. As noted by the Supreme court: "Errors of the kind alleged in these cases can be remedied adequately by

transcripts of the state proceedings indicate that Superior Court Judge DeMartin examined when the misconduct took place, and whether the Grand Jury was tainted by such misconduct as to deprive Petitioner of a fair hearing. *See* 5MT at 36-37. The Court concludes that Judge DeMartin's finding that "there is no showing of prosecutorial impropriety or infringement on the grand jury dependence or decision making function, *See* 5MT at 38, was correct. *See also State v. Hartig,* A3124-95T4, at 3 (N.J. Super. Ct. App. Div. filed Nov. 26,1997) ("We are further in substantial agreement with Judge DeMartin'sfinding that there was no showing of prejudice by defendant which would justify the extreme sanction of dismissal in this case.")

Furthermore, a close examination of Petitioner's claim, as now asserted in the instant Petition, appears to arise from dismissed charges against the victim, Mr. Berson, in the Mercer County Municipal Court, rather than from errors in the Petitioner's own proceedings. *See* Pet. at attachment. Indeed, as Petitioner claims, "Armed with[improperly disclosed Grand Jury materials], counsel was able to have all charges against Mr. Berson, dismissed." *Id.*

In light of the overall proceedings the Court cannot find that prosecutorial misconduct prejudiced Petitioner as to deny him his Due Process rights to a fair trial. *See. e.g., United States ex rel. Perry v.*

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means other than dismissal." *Bank of Nova Scotia,* 487 U.S. at 263.

Mulligan, 544 F.2d 674, 678 (1976), *cert. denied*, 430 U.S. 972 (1977) ("[W]e must determine whether [prosecutorial misconduct] so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974))). Here, the evidence against the Petitioner was substantial, if not overwhelming, and lead a jury to reach a just verdict that was untainted by the alleged prosecutorial misconduct. Although prosecutorial misconduct did occur after the conclusion of the grand jury proceedings, the court concludes that th misconduct did not deprive Petitioner of his Due Process rights. Thus, Petitioner's claims are without merit and do not rise to the level of a constitutional violation.

2. *Ground II*

Ground II of Petitioner's application for habeas corpus relief states that the New Jersey trial court violated Petitioner's Fourteenth Amendment Due Process rights by not charging the jury with the lesser included offense of Simple Assault, in violation of N.J. Stat. Ann. § 2C:12-1(a). *See* Pet. at ¶ 12.B. This Court, however, finds that Petitioner's Due Process rights, as protected under the Fourteenth Amendment of the United States Constitution, were not violated. Furthermore, Petitioner's argument that the trial court did not charge the jury of Simple Assault is false.

The primary difference between Aggravated Assault and Simple Assault is the nature of the injury inflicted upon the victim. Under N.J. Stat. Ann

§ 2C:12-1a and 1b Simple Assault is defined as a criminal act by an individual "bodily injury" to another, whereas Aggravated Assault is defined as a criminal act by an individual "to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury..."

Additionally, a charge of Simple Assault was given in the trial court's instructions to the jury. *See* T10 at 114-15. In fact, the trial judge clarified the distinction between Aggravated Assault and Simple Assault, quoting verbatim from N.J. Stat. Ann. § 2C:11-1a and 1b, that "Bodily injury means physical pain, illness or any impairment of the physical condition," *See* T10 at 115, and serious bodily injury "means bodily injury which creates a substantial risk of death...or which causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ, *see id.* at 109." Thus Petitioner's argument is without merit.

3. *Ground III*

Petitioner argues in Ground III that the sentencing curt violated his Due Process rights when it departed upwardly based on Petitioner's perjured testimony at trial. *See* Pet. at ¶ 12.C. Petitioner's contention that the sentencing court failed to properly consider aggravating and mitigating factors, pursuant to N.J. Stat. Ann. § 2C:44-1,[5] amounts to an argument

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[5] New Jersey statute provides in part:

a. In determining the appropriate sentence...

that the sentencing judge abused his discretion in applying this statute. An alleged error in the application of state law simply is not cognizable in a habeas corpus proceeding. *See Toulson v. Beyer,* 827 F. Supp. 307,311 (D.N.J. 1993), *aff'd,* 30F. 3d 1488 (3d Cir. 1994) (citing *Grecco v O'Lone,* 661F. Supp.408, 415 (D.N.J. 1987); *see also United States el rel. Sluder v. Brantly,* 454 F.2d 1266, 1269 (7th Cir. 1972) (sentence which was imposed within limits set by state law for offense raises no cognizable federal issue).[6] "[I]t is well established that a state court's

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the court shall consider the following aggravating circumstances:
(1) The nature and cicumstances of the offense..
(2) The gravity and seriousness of the harm inflicted on the victim...

* * *

b. In determining the appropriate sentence to be imposed...the court may properly consider the following mitigating circumstances:

* * *

N.J. Stat. Ann. § 2C:44-1.

[6] While stating that "no penalty is *per se* unconstitutional ," the United States Supreme Court has noted that "reviewing courts, of course, should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishmentfor crimes, as well as to the discretion that trial courts possess in sentencing convicted criminals." *Solem v. Helm,* 463 U.S. 277, 290 (1983). Although a federal district court has

misapplication of its own law does not generally raise a constitutional claim." *Smith v. Horn,* 120 F. 3d 400, 414 (3d Cir. 1997) (citations and internal quotation marks omitted), *cert. denied,* 522 U.S. 11109 (1998); *see also Smith v. Zimmerman,* 768 F.2d 40, 43 (3d Cir. 1984) (no due process rights to the determination of issues of state law). Thus, the Court concludes that the Petitioner has not asserted a Due Process depravation based on the sentencing court's application of New Jersey law.[7]

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jurisdiction to review the validity and length of a state court sentence when a constitutional defect in such sentence is properly asserted, the relavant standard of review is very limited. *See Toulson,* 827 F. Supp. at 309.

[7] Petitioner's Fourteenth Amendment Due Process claim is not cognizable because the sentence was imposed was within the sentencing limits set by New Jersey law. Petitioner was convicted on a Second Degree Aggravated Assault charge, in violation of N.J. Stat. Ann. § 2C:12-1b, and on a petty offense of Disorderly Conduct, in violation of N.J. Stat. Ann. § 2C:33-2a. *See* Order for Commitment, Smithson, JSC, dated Jan. 5, 1996. The Disorderly Conduct violation merged with the Aggravated Assault violation for sentencing purposes. *Id.* This sentence is within the rangefor a crime of second degree. *See* N.J. Stat. Ann. § 2C:43-6a(2). As the discussion above makes clear, state sentencing determinations that fall within applicable range are afforded great deference and generally are not reviewable through a habeas corpus proceeding. *See*

C. Conclusion

For the reasons discussed above, the Petition for a writ of habeas corpus is denied. Because Petitioner has not made a substantial showing of denial of a constitutional right, no certificate of appealability will issue pursuant to 28 U.S.C. § 2253(a). *See* Fed. R. App. P. 22(b)(1); 3d Cir. L.A.R. 22.2. An appropriate order is filed herewith.

GARRETT E. BROWN, JR., U.S.D.

../s/.....

Solem, 463 U.S. at 290; *Branan v. Booth,* 861 F.2d 1507, 1508 (11th Cir. 1988), Grecco, 661 F. Supp. at 415.

[Appendix D]

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
C.A. No. 00 -2856
CPS - 63 December 20, 2001

NORMAN HARTIG
v.
MICHAEL McKEEN
(D.N.J. CIV. NO. 99-CV-04279)

Present: SCIRICA, AMBRO AND STAPLETON,
Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c) (1)

in the above case.

Respectfully,

../s/.....
Clerk

MMW/RJL/nf

ORDER

The foregoing application for a certificate of appealability is denied. For essentially the reasons explained by the District Court in its September 6, 2000, opinion, Hartig has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

By the Court,

../s/.....
Circuit Judge

dated: 15 January 2002

[Appendix E]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 99-0017 (GEB)
ORDER Filed Feb 2, 1999

NORMAN HARTIG
Petitioner,

v.

MICHAEL MCKEEN, et al.,
Respondents.

This matter having been opened to the Court on the motion of Norman Hartig, petitioner for writ of habeas corpus, seeking the appointment of counsel pursuant to 28 U.S.C. § 1915 (d), and the Court having considered the moving papers, there being no opposition thereto, and having entered a Memorandum on this date setting forth its decision in this matter pursuant to Fed. R. Civ. P. 78, and for good cause shown,

IT IS on this 1st day of February, 1999,

ORDERED that petitioner's motion for the appointment of counsel be and is hereby denied.

FREDA L. WOLFSON
UNITED STATES MAGISTRATE JUDGE

/s/.....

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
C.A. No. 99-0017 (GEB)

MEMORANDUM Feb 2, 1999

NORMAN HARTIG
v.
MICHAEL MCKEEN, et al.

WOLFSON, UNITED STATES MAGISTRATE JUDGE

Presently before the Court is the motion by Norman Hartig, petitioner for writ of habeas corpus, seeking appointment of counsel pursuant to U.S.C. § 1915 (d). The Court hasreceived moving papers, thereby being no opposition thereto, and considers this matter pursuant to Fed. R. Civ. P. 78. For the following reasons, petitioner's motion is denied.

Background

On January 5, 1996 the Superior Court of New Jersey, Mercer County, entered a judgment of criminal conviction against petitioner for aggravated assault in the second degree. After exhausting his relief in the New Jersey State Courts, in January of 1999, petitioner filed a petition for a writ ofhabeas corpus in Federal Court, alleging violations of his due process rights and claiming prosecutorial misconduct and trial court error. See Petition for Habeas Corpus dated January 1, 1999, pp, 5-6.

Presently, petitioner is incarcerated in the Southern State Correctional Center in Delmont, New

Jersey. On January 4, 1999, Petitioner filed the instant motion for the appointment of counsel. Along with this motion, petitioner submitted his application for habeas corpus, an application to proceed in forma pauperis, and a five dollar filing fee. In support of his appointment of counsel, petitioner asserts that although he is literate, due to the complexity of thecase, he lacks the legal expertise to skillfully present the merits of his claims. See Notice of Motion for appointment of Counsel dated January 1, 1999. Petitioner further contends that counsel should be appointed as his lac+k of legal expertise and the fact that he is presently confined will inevitably preventing him from zealously pursuing discovery and conducting a thorough investigation of the pertinent issues. See Id.. As a result, petitioner claims that the ends of justice will be jeopardized simply because he lacks the funds to retain an attorney or, alternatively, the ability to artfully present his own case. Petitioner thus urges the Court to grant his motion for the appointment of counsel.

Discussion

Pursuant to § 1915(d), "[t]he court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." 28 U,S.C. § 1915(d). Although there is no requirement that counsel be appointed for an indigent in civil matters, a court may request counsel to represent a party when, in the court's discretion, the circumstances of the case so

warrant. See Tabron v. Grace, 6 F.3d 147, 153 (3d Cir. 1993), cert. denied, 510 U.S. 1196, 114 S. Ct. 1306 (1994); Ray v. Robinson 640 F.2d 474,477-478 (3d Cir. 1981).

In Tabron, the Third Circuit set forth the standard under which courts should consider motions pursuant to § 1915(d). The Third Circuit instructed that, in determining whether to appoint counsel, a court must first determine whether the plaintiff's claims have any merit in fact or law. See Tabron, 6 F.3d at 155. If the court finds that the claims are not frivolous, the Third Circuit advised, the court should then weigh other factors before granting the plaintiff's motion, including: (1) the plaintiff's ability to present his or her case, including the plaintiff's level of education, literacy, and prior work or litigation experience; (2) the complexity of the legal issues presented; (3) the degree to which factual investigation will be required; (4) the indigent plaintiff's ability to pursue such investigation; and (5) whether credibility determinations will play dispositive roles in the resolution of the plaintiff's claims. See id at 155-56. See also Childs v Duckworth, 705 F.2d 915, 922 (7th Cir. 1983) The Third Circuit noted that the list of factors was not exhaustive, and stressed that "appointment of counsel remains a matter of discretion; section 1915(d) gives district courts broad discretion to determine whether appointment of counsel is warranted, and the determination must be made on a case-by-case basis." Tabron, 6 F.3d at 157-58.

The Court is mindful of the limited resurces available for the representation of indigent civil litigants. Indeed, as observed by the Third Circuit in Tabron, the large number of prisoner civil rights cases filed each year in the federal courts, combined with the lack of funds available to pay appointed counsel and the limited number of lawyers willing to undertake such representation, inflict "significant practical restraints" on the court's ability to appoint counsel. Tabron, 6 F.3d at 157.

For purposes of this motion, the Court shall assume that petitioner has satisfied the threshold requirement of presenting a meritorious claim. However, petitioner ha failed to satisfy the requirements that would justify the appointment of counsel in accordance with the factors as set forth in Tabron. First, as of the date of this Memorandum, petitioner's application to proceed in forma pauperis ha not yet been approved by Judge Garrett E. Brown, U.S.D.J.. Thus, petitioner has not demonstrated his financial inability to retain counsel.

Notwithstanding his failure to retain an Order to proceed in forma pauperis, petitioner's motion for appointment of counsel fails to meet the other Tabron factors. First, while petitioneradmits that he is literate, he asserts that the issues involved in this case are so complex that he lacks the requisite skill and expertise to properly litigate the issues. Contrary to these claims, however, petitioner's moving papers and the papers submitted in support of his petition for habeas corpus, indicates that he understands the litigation

process and is capable of articulating a persuasive argument. Thus, under Tabron, petitioner's apparent lack of litigation experience alone, is an insufficient basis for the appointment of counsel where the weight of the other relevant factors indicates that the petitioner is capable of representing himself. See Tabron, 6 F.3d at 156. Here, petitioner is literate, has personal knowledge of the significant facts of the claims, and has had the assistance of an attorney throughout his criminal trial and the subsequent appeals process.

Moreover, petitioner has not presented sufficient evidence of the complexity of the issues to warrant the appointment of counsel. In Childs v. Duckworth, 705 F.d at 922-23, the Seventh Circuit upheld the district court's determination to deny the appointment of counsel, concluding that th defeant prisoner's claims did not rise to the level of complexity required to appoint counsel because the defendant was able to present his own case as all of the contested issues wre within the defendant's own knowledge and the defendant was sufficiently articulate. Likewise, in the present case, petitioner is similarly capable. Petitioner's underlying claims stem from what petitioner alleges was prosecutorial misconduct and trial court error. Thus, the significant circumstances of the prosecutorial misconduct and trial court error are largely within the petitioner's personal knowledge. Additionally, since petitioner has already litigated the sameissues during the state court appeals process, he should at this junctur, have

a comprehensive understanding of the pertinent legal issues.

Furthermore, although petitioner is presently incarcerated, he is still capable of gathering appplicable legal materials from the facilities available at the Southern State Correctional Center. Likewise, because petitioner's claims are being brought in the form of a petition for habeas corpus, and not in the context of a trial, credibility determinations and any additional factual discovery will be largely unnecessary in this matter. Hence, petitioner will neither be seriously hampered or prejudiced due to the fact of his confinement.

In sum, petitioner has failed to establish that consideration of the Tabron factors, as set forth supra, vis-a-vis the circumstances of this case, weight in favor of the appointment of counsel. Based upon the foregoing, and considering the limited resources available for the representation of indigent civil litigants, the Court will deny petitioner's motion for the appointment of counsel. An appropriate Order will follow.

[Appendix F]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
C.A. No. 99-4279 (GEB)

TRAVERSE

NORMAN HARTIG, Petitioner
v.
MICHAEL MCKEEN, et al. Respondents

Norman Hartig, # 277610
PO Box 111
Verona, N.J. 0744-0111

STATE OF NEW JERSEY)
COUNTY OF ESSEX)

Petitioner by this Traverse responds to the allegations of Respondent's Answer to the Writ of Habeas Corpus in the above-entitled proceeding and says that:

The answer contained in paragraph #1 is not disputed.

The answer contained in paragraph #2 is not disputed. Petitioner had previously filed a petition for Habeas Corpus relief under docket no. C.A. 99-17 (GEB) but said petition was dismissed on procedural grounds which were corrected and re-submitted under docket No. 99-4279 (GEB) and petitioner assumed that the re-filing was a continuation and not a new action. The omission was not intended for the purpose of delay or confusion.

3. The answer contained in paragraph #3 is disputed. See attached legal argument.

4. The answer contained in paragraph #4 is disputed as it relates to question #13 of petitioner's application. The answer is not in accordance with the rules governing Habeas Corpus proceedings. (see Ukawabutu v. Moton, 997 F. Supp. 605, (D.N.J. 1998)

5. The answer contained in paragraph #5 is not disputed.

Wherefore, petitioner respectfully asks this Court to sustain this application for Habeas Corpus relief.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on Dec. 10, 1999

Norman Hartig

../s/.....

LEGAL ARGUMENT

Under point one of Respondent's Legal Argument is is advanced that, "petitioner has not stated a claim upon which relief can be granted and therefore, the petition should be dismissed." Contrary to respondent's assertion, prosecutorial misconduct states a valid Federal claim. Derden v. Wainwright, 106 S.Ct. 2464.

Respondent further asserts, that petitioner has failed to satisfy the two prong test of Matteo v. Supt. S.C.I. Albion et al., 171 F.3rd 877(3rd Cir. 1999), viz., (1) the state adjudication has resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the U.S. Supreme Court, (2) resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 29 U.S.C.A. § 2265 (d) (2).

First of all, the state court proceeding before the Honorable Judge DeMartin was contrary to the holding in, Bank of Nova Scotia, 108 S.Ct. 2369, which held:

" It is not enough, however, that the rules have been violated or that "the integrity of th judicial process" has been impugned; the defendant must have suffered prejudice as a result." Supra at 2373.

Although the Court did analyze the evidence in some detail, Judge DeMartin did not make factual

findings of prejudice.* Respondents admit and do not deny that grand jury materials were released in violation of the secrecy requirements. Respondents vehemently protest that the release was "inadvertent" and did not prejudice the defendant. A review of the transcripts, before Judge DeMartin at the evidentiary hearing, clearly reveals that several members of the Mercer County prosecutor's office engaged in an audacious pattern of illegal activities to portray the defendant, Norman Hartig, as the aggressor, when in fact, the entire incident was provoked by the alleged victim, Mr. Berson. Consequently, defendant filed criminal charges against Berson for assault in Municipal Court. It was the filing of these charges against Berson, that prompted the prosecutors officeto unlawfully disclose grand jury materials to Berson's attorney** to assure an aquittal of the

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* Petitioner further relies on the legal argument submitted under C.A. 99-17, in his request for an Evidentiary hearing.

** On page 2 of respondents answer, she incorrectly stated that the medical records were disclosed to Berson's attorneys which were of the victim. Not so, the medical records unlawfully disclosed were those of the defendant. Defendant had presented to the grand jury medical reports of a serious injury sustained prior to the altercation with Berson, which showed the extent of the injury to be a broken collar bone held together by metal pins. The medical reports were introduced to substantiate defendants

charges, undermine defendants trial defense, and enhance the credibility of Berson whom was to be the states star witness against defendant Hartig. Equally outrageously, during the evidentiary hearing before Judge DeMartin, when defendants counsel exposed the plot by the prosecutors, they committed perjury in an attempt to cover-up their misconduct. Counsel pressed on and lifted the covers off. Having found themselves caught between the devil and the deep blue sea, it was then, that they admitted their guilt.

It is respectfully submitted, that the willfull and intentional conduct demonstrsted by these public officials,to circumvent the laws of this state, are anything but, "inadvertent." Furthermore, these actions were designed and calculated for the express purpose of creating extreme prejudice to the defendant. Although the prosecutors admitted their guilt, they have failed to offer one justifiable reson for their actions. The inadvertent lack of prejudice excuse is simply, preposterous.

Petitioner will rely on the papers submitted under C.A. 99-17, in support of his argument for the remaining points in respondent's answer. Additionally, it is noted that respondent has not cited

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condition prior to the incident and that he was not able to be the aggressor.

any supporting authority for the proposition, that a Federal Court is bound by state court interpretation of Federal law.

CONCLUSION

Wherefore, petitioner has demonstrated an infringement of his constitutional rights and as a result, is being unlawfully detained. Petitioner respectfully requests, that this Honorable court decide the merits of his petition and cause the Writ of Habeas Corpus to issue.

Date: Dec. 10, 1999.

Respectfully Submitted,
NORMAN HARTIG

../s/.....